

Application No.: 09/898,136

Docket No. D02570-04

REMARKS**A. Status of the Application**

Claims 1 – 4 were under consideration in the instant application.

With this response the Applicant has requested the amendment of Claims 1, 3 and 4, and the amendment of the Specification.

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B. Formalities regarding the Election/Restriction of Claims

The Examiner noted the Applicants mislabeling of Claims 22-35. In a response to the previous action the Applicants erroneously labeled these claims as "Not Elected". The proper label of "Withdrawn" is applied to these claims in this response.

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C. Objections of the Specification

The Examiner objected to the Specification for failing to provide the proper U.S. Application Numbers for the applications referenced therein. With this response the Applicants have requested the inclusion of such application numbers within the specification.

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D. Rejections of the Claims under 35 U.S.C. § 112

The Examiner rejected Claims 3 under 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter of the invention. In particular, the Examiner noted that the recitation of "the first cryptographic key" in Claim 3 lacked antecedent basis.

Applicants thank the Examiner for pointing out this deficiency. Claims 3 and 4 have been amended with this response thereby removing any reference to "the first cryptographic key" from these claims. These claims now refer to "the unique key" which has antecedent basis in Claim 1.

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E. Rejections of the Claims under 35 U.S.C. § 103

The Examiner rejected claims 1-4 as being anticipated under 35 U.S.C. § 103(a) by U.S. Patent No. 6,157,719 ("Wasilewski") in view of EBU Project Group B/CA ("EBU"). In doing so the Examiner contended that Wasilewski discloses a conditional access system providing conditional access to programs broadcast to a population of set-top boxes.

With respect to Claim 1, the Examiner notes that he finds support within Wasilewski for: differing levels of encryption, the use of a control word to perform encryption; encryption of the control word using a periodic multi-session key (MSK); broadcasting the control word to all set-top boxes in an entitlement control message (ECM); and encrypting the MSK using a key specific to an entitled set-top box and transmitting that MSK to the set-top box in an entitlement management message (EMM). No support for sharing a virtual set-top box among different conditional access systems is found within Wasilewski by the Examiner, however the Examiner relies upon EBU for such.

Addressing the combination of Wasilewski and EBU, Applicants note that Wasilewski teaches the generation of multiple unique addresses for the many SEES within the conditional access system it describes. This is not an inconsequential point. The Examiner stated in the Final Rejection that the Wasilewski SEES was the functional equivalent of the virtual set-top boxes disclosed by the Applicants. Applicants argue to the contrary. The SEES is indeed described by Wasilewski as a module that uses an MSK to generate control words which are in turn employed for encryption, and also creates ECMs that are used for transporting control words with the encrypted content. This is not functionally equivalent to the Applicants' virtual set-top boxes. A key element of the functionality of the virtual set-top boxes within the Applicants' invention is the assignment of identical fictitious addresses to all of the virtual set-top boxes within a conditional access system. The Applicants are not claiming a virtual set-top box, nor a population of virtual set-top boxes. Rather the claims are directed toward a method for forwarding cryptographic keys with a conditional access system, in which a single fictitious address associated with a fictitious set-top box is employed across a number of conditional access systems. The Wasilewski SEES is not functionally equivalent to this type of virtual set-top box.

However, even assuming that the Wasilewski SEES and the Applicants' virtual set-top box could be seen as having the same functionality (a point the Applicants are not conceding), there is no reasonable combination of the EBU reference with Wasilewski that would yield the Applicants' invention.

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EBU makes no disclosure or suggestion of the use of a single virtual set-top box address across a number of conditional access systems, and the examiner never makes the claim that EBU does. The Applicant suggests that the EBU reference is not used as source for additional functionality by the Examiner, but rather as a sweeping invitation to extend the functionality of Wasilewski (or any other known reference) well beyond what might be disclosed in those references. Applicants submit that EBU in combination with Wasilewski cannot be seen as resulting in the Applicants' invention – There is no suggestion which would have prompted a person of ordinary skill in the art to arrive at the Applicants invention; not without the hindsight that such a person would only gain by knowing of the Applicant's invention prior to reading the cited references.

For all of the above reasons the Applicants request the Examiner reconsider the rejection of Claim 1 (and Claims 2-4 which depend therefrom) under § 103(a).

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F. Conclusion

The presently amended claims are believed to patentably distinguishable from the cited art, and Applicant respectfully requests that they be passed to allowance. Should any issues arise that prevent early allowance of the above application, the examiner is invited contact the undersigned to resolve such issues.

To the extent an extension of time is needed for consideration of this response, Applicant hereby request such extension and, the Commissioner is hereby authorized to charge deposit account number 502117 for any fees associated therewith.

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Respectfully submitted,

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